

BRB No. 03-0686 BLA

ROBERT LEE SLATES

Claimant-Petitioner

V.

DATE ISSUED: 05/27/2004

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR

Party-in-Interest

DECISION and ORDER

Appeal of the Decision and Order Denying - Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2002-BLA-379) of Administrative Law Judge Michael P. Lesniak denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge acknowledged the parties' stipulation and found that claimant was a coal miner within the meaning of the Act for ten years, but further found that claimant only had seven years of exposure from qualifying coal mine employment and adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge considered all of the evidence of record and found that it was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), but insufficient to establish that the miner's pneumoconiosis was related to coal mine employment pursuant to 20 C.F.R. §718.203(c). The administrative law judge further found that the evidence was insufficient to establish that claimant was totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv) or totally disabled due to

pneumoconiosis pursuant to 20 C.F.R. §718.204(c)(1). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence was insufficient to establish that claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(c) and that claimant was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §§718.204(b)(2)(iv) and 718.204(c). The Director, Office of Workers' Compensation Programs, has not filed a response to claimant's appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure of claimant to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error.

With respect to Section 718.203(c), we reject claimant's contention that "the administrative law judge misread Dr. Schaaf's deposition testimony regarding the cause of claimant's pneumoconiosis and the role played by claimant's coal mine dust exposure." Claimant's Brief at 2. We hold that the administrative law judge acted within his discretion as trier-of-fact in concluding that the evidence was insufficient to carry claimant's burden to establish that pneumoconiosis arose out of coal mine employment. *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990). The administrative law judge considered Dr. Schaaf's medical report of the November 16, 2000 examination of claimant, along with Dr. Schaaf's December 16, 2002 deposition testimony, and noted that while Dr. Schaaf diagnosed pneumoconiosis, the doctor could not decide whether coal dust exposure or clay pottery factory dust exposure was the cause. Decision and Order at 8-9; Director's Exhibit 12; Claimant's Exhibit 1 at 15-18. The administrative law judge reasonably found that Dr. Scaaf's opinion was too equivocal and uncertain to establish a relationship between claimant's pneumoconiosis and his coal mine employment. Decision and Order at 15; Director's Exhibit 12;

Claimant's Exhibit 1. The administrative law judge thus permissibly found that Dr. Schaaf's opinion was insufficient to establish the existence of pneumoconiosis arising out of coal mine employment. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985). Consequently, the administrative law judge's finding that claimant failed to produce sufficient evidence to link his pneumoconiosis to his coal mine employment pursuant to Section 718.203(c) is supported by substantial evidence and is affirmed.

Claimant has the general burden of establishing entitlement and bears the risk of non-persuasion if his evidence is found insufficient to establish a crucial element of entitlement. *See Trent*, 11 BLR 1-26; *White v. Director, OWCP*, 6 BLR 1-368 (1983). The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987). Because claimant has failed to establish that his pneumoconiosis was related to coal mine employment, an essential element of entitlement pursuant to 20 C.F.R. Part 718, benefits are precluded.¹ *Trent*, 11BLR 1-26; *Perry*, 9 BLR 1-1. Consequently, we affirm the administrative law judge's denial of benefits as it is supported by substantial evidence and in accordance with law. *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986).

¹ As we affirm the denial of benefits based on the administrative law judge's consideration of the merits pursuant to 20 C.F.R. §718.203(c), we need not address claimant's contentions regarding 20 C.F.R. §718.204(b)(2)(iv).

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge